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Attorneys for Defendants CITY AND COUNTY  
OF SAN FRANCISCO, HEATHER FONG AND  
ERNEST FERRANDO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TELITHA BALL, DESSIA  
PATTERSON, a minor, TELITHA  
PATTERSON, a minor, by and through  
their Guardian ad litem, TELITHA BALL,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, EARNEST FERRANDO,  
EDWARD YU, MICHAEL BROWNE,  
JAMERSON PON, JOHN  
GREENWOOD, DOUGLASS FARMER,  
WENDELL JONES, SEAN GRIFFIN,  
REESE BURROWS, MICHAEL  
NELSON, JOHN SYME, DAVID DO,  
KEVIN MURRAY, MATTHEW  
MASON, KEVIN CHIN, HEATHER  
FONG, and DOES 1 to 30,

Defendants.

CASE NO.: 08-2831 MHP

**DECLARATION OF KIMBERLY  
BLISS IN SUPPORT DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S  
REQUEST FOR PAYMENT OF COSTS  
AND ATTORNEY FEES RE MOTION  
TO REMAND**

Date: August 11, 2008  
Time: 2:00 p.m.  
Place: Crtrm. 15  
Judge: Hon. Marilyn H. Patel

Removal Date: June 6, 2008  
Trial Date: Not Set

I, KIMBERLY A. BLISS, declare:

1. I am an attorney and counsel of record for defendants City and County of San Francisco (the "City"), Police Chief Heather Fong and Lt. Ernest Ferrando in this action. The

1 following facts are known to me personally, and if called upon as a witness, I would testify to them  
2 competently.

3       2. On June 6, 2008, Defendants City and County of San Francisco (the "City") and  
4 Heather Fong (in her official capacity) removed this case to federal court pursuant to 28 U.S.C. §§  
5 1331 and 1441(a) & (b), on grounds that the First Amended Complaint stated *federal* claims pursuant  
6 to 28 U.S.C. §1983 (for violation of Plaintiffs' federal constitutional rights) and *Monell v. Department*  
7 *of Social Services of the City of New York*, 436 U.S. 658 (1978). At the time of removal, Defendants  
8 City and Fong believed they were the only defendants to have been served the Summons and First  
9 Amended Complaint, and so indicated in their Notice of Removal. (See Docket entry No. 1 ["Notice  
10 of Removal"].) The removing defendants reasonably believed that they were the only defendants to  
11 have been served because—as of the date of removal—none of the individual defendants had  
12 informed the SFPD Legal Department that they had received service of the summons and complaint,  
13 as they are required to do by the General Orders of the SFPD.

14       3. On June 10, 2008, I received a letter from Plaintiffs' counsel contending that Police  
15 Chief Heather Fong had been served in her individual capacity and that all the individual defendants  
16 needed to join in the removal because they were "otherwise in receipt" of the complaint because the  
17 City Attorneys' office is sometimes given permission to accept service on behalf of individual  
18 officers. (Attached hereto as Exhibit A is a true and correct copy of Plaintiffs' June 10, 2008 letter to  
19 me.) I responded the very next day (July 11, 2008), informing Plaintiffs' counsel that Chief Fong had  
20 **not** been individually served and that, pursuant to Supreme Court precedent, the other defendants did  
21 not need to join in the removal unless they were formally served. (Attached hereto as Exhibit B is a  
22 true and correct copy of my June 11, 2008 correspondence to Plaintiff's counsel.) Despite the fact  
23 that Plaintiff had not personally served Chief Fong, the Chief authorized me to accept service of the  
24 summons and complaint on her in her individual capacity as a professional courtesy to Plaintiffs.

25       4. On June 11, 2008, Plaintiffs' counsel and I spoke on the phone. He reiterated his  
26 position that all defendants needed to join in the removal and that Chief Fong was served in her  
27 individual capacity. I disagreed, and wrote a letter on June 11, 2008 confirming our conversation.  
28 (Attached hereto as Exhibit C is a true and correct copy of my confirming letter to Plaintiffs' counsel.)

1 At no time during our conversation did Plaintiffs' counsel indicate that he had personally served Lt.  
2 Ferrando on May 19, 2008.

3 5. Despite knowing that Lt. Ferrando had been served on May 19, 2008, Plaintiffs'  
4 counsel did not challenge my repeated assertions (in correspondence and on the phone) that none of  
5 the individual defendants had been served. Nor did he file a proof of service indicating that Lt.  
6 Ferrando had been served. Instead, he wrote me a letter on June 19, 2008—one day after the time  
7 period for Lt. Ferrando to file a notice of joinder in the removal—to inform me for the first time that  
8 Lt. Ferrando had been served and the removal was according procedurally defective. (Attached  
9 hereto as Exhibit D is a true and correct of Plaintiffs' counsel's June 19, 2008 correspondence.)

10 6. Shortly thereafter, I was able to reach Lt. Ferrando and verify that he had been  
11 personally served on May 19, 2008. Accordingly, on Thursday, June 26, 2008, Lt. Ferrando filed an  
12 Answer. That same day, Plaintiffs' counsel and I met and conferred telephonically regarding the  
13 potential remand of this case. I informed Plaintiffs' counsel that he did not need to file a motion to  
14 remand, as the defendants would stipulate to remand. Accordingly, I drafted a Stipulation and  
15 [Proposed] Order to Remand, which was emailed to Plaintiffs' counsel on June 26, 2008. (Attached  
16 hereto as Exhibit E is a true and correct copy of the proposed Stipulation and Order to Remand sent to  
17 Plaintiff's counsel.)

18 7. On June 27, 2008, the parties exchanged a series of emails in which they discussed the  
19 substance of the stipulation. More specifically, Plaintiffs' counsel requested: 1) that Defendants'  
20 waive the 30-day limit for filing a Motion to Remand; 2) that the stipulation be changed to reflect that  
21 Plaintiffs had served Chief Fong in both her official and individual capacity, but that the Chief did not  
22 file a Notice of Joinder in the removal in her individual capacity; and 3) that Defendants represent  
23 whether or not it would be proper for the remaining defendants to file Notices of Removal.  
24 Defendants refused to make these changes because: 1) there was no need to waive the 30-day limit  
25 because the parties were stipulating to remand; 2) Plaintiff was simply factually incorrect that  
26 Plaintiffs had served Chief Fong in both her official and individual capacity requiring her to file a  
27 notice of joinder in the removal in her individual capacity; and 3) the Stipulation to Remand was not  
28 the proper place to indicate whether a future removal (based on unknown facts and circumstances)

1 would be proper. (Attached hereto as Exhibit F is a true and correct copy of the email  
2 correspondence between myself and Plaintiffs' counsel.) Nonetheless, I indicated defendants  
3 continuing willingness to stipulate to remand. (*Id.*)

4 8. Because defendants did not receive a response to their final email on June 27, 2008, I  
5 sent an email to Plaintiff's counsel on July 1, 2008 asking for a response and indicating that I would  
6 be out of the office July 3-6, 2008. (*Id.*) Plaintiffs' counsel never responded to my July 1, 2008 email  
7 by phone or correspondence, and instead filed the instant Motion to Remand on July 7, 2008.

8 I declare under penalty of perjury under the laws of the State of California and the United  
9 States of America that the foregoing is true and correct. Executed on July 21, 2008, at San Francisco,  
10 California.

11 /s/ Kimberly A. Bliss  
12 KIMBERLY A. BLISS  
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# **EXHIBIT A**

**DECLARATION OF KIMBERLY BLISS IN SUPPORT DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S REQUEST FOR PAYMENT OF COSTS AND  
ATTORNEY FEES RE MOTION TO REMAND**

GREGORY M. HAYNES, Esq.  
2443 Fillmore, #194  
San Francisco, CA 94115  
(415) 546-0777

June 10, 2008

KIMBERLY A. BLISS  
1390 MARKET STREET  
SIXTH FLOOR  
SAN FRANCISCO, CA 94102  
OFFICE OF THE CITY ATTORNEY  
RE: BALL V. CCSF

Dear Ms. Bliss,

I am in receipt of your notice of removal. I request that you have Heather Fong answer individually as she was served as such.

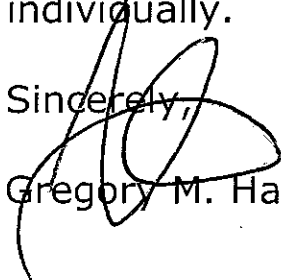
Further, the failure to have her join in the removal individually renders the removal procedurally defective as all persons who are served or otherwise receive the complaint and summons must appear and join the removal.

Further, a defendant who did not answer before removal must answer within 20 days of receipt by service or otherwise of the summons and complaint or 5 days after notice of removal. FRCP 81 (c) (2)

In fact, all the defendants in this matter must join the removal notice that have been served or otherwise have received the summons and complaint. Those who have not been personally served are, in fact, otherwise in receipt as your office accepts such services without process, when it meets the needs of the office of the City Attorney.

Please advise me whether all the defendants in this matter will join the notice of removal, including Heather Fong, individually.

Sincerely,

  
Gregory M. Haynes

P.S., THE LAST DAY ~~to~~ FOR ALL ~~the~~ defendants  
to join was June 6, 2008, GIVING DEFENDANTS THE  
BENEFIT OF ANY AMBIGUITY, IF ALL DEFENDANTS HAVE  
NOT JOINED THE REMOVAL BY JUNE 17, 2008, I WILL EXPECT  
DEFENDANTS TO REMAND THE CASE TO STATE COURT.

# **EXHIBIT B**

**DECLARATION OF KIMBERLY BLISS IN SUPPORT DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S REQUEST FOR PAYMENT OF COSTS AND  
ATTORNEY FEES RE MOTION TO REMAND**





## CITY AND COUNTY OF SAN FRANCISCO

## OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA  
City Attorney

KIMBERLY BLISS  
Deputy City Attorney

DIRECT DIAL: (415) 554-3861

E-MAIL: kimberly.bliss@sfgov.org

June 11, 2008

Gregory M. Haynes, Esq.  
2443 Fillmore, #194  
San Francisco, CA 94115

**Via U.S. Mail and Facsimile: (650) 755-1563**

Re: *Ball et al. v. CCSF et al.*; U.S. Dist. Ct. Case No. C 08-02831 EMC

Dear Mr. Haynes:

I write in response to your letter of June 10, 2008, requesting that: 1) "Heather Fong answer individually as she was served as such"; and 2) "all the defendants in this matter . . . join the notice of removal." You are incorrect on both accounts.

It is my understanding that Chief Fong has not been served individually, but rather, that a copy of the summons and complaint (but not the required state court-issued notices) were left with the front desk of the Legal division of the SFPD. That office has no authority to accept service on behalf of City employees sued in their individual—as opposed to official—capacities. Instead, City employees, including the Chief, are entitled to personal service pursuant to C.C.P. § 415.50. I know of no other service on Chief Fong, and no proof of service indicating personal service on Chief Fong was filed with the state court prior to removal.

Nonetheless, I now represent Chief Fong for purposes of this action, and as a professional courtesy to you and your clients, am now authorized to accept service on her in her individual capacity, effective today. You do not need to send me additional copies of the summons or First Amended Complaint. We will timely file an answer on behalf of Chief Fong in her individual capacity.

As for your contention that the other individual defendants (or even Chief Fong in her individual capacity) need to join in the notice of removal, you are simply incorrect. As you know, unserved defendants need not join in a notice of removal. *See Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9<sup>th</sup> Cir. 1988). Your letter concedes that the remaining individual defendants have not been served, but contends that they are "otherwise in receipt" of the complaint because this office sometimes accepts service on behalf of City employees "when it meets the needs of the City Attorney." You are wrong both legally and factually, and you provide no authority to support your position.

First, the Supreme Court has specifically held that a defendant must be formally served to trigger the deadline to remove. *See, e.g., Murphy Bros., Inc. v. Michette Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) ("we hold that a named defendant's time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, 'through service or otherwise,' after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service"). Second, as a courtesy to plaintiffs and their counsel, this office will sometimes accept individual service *when an officer or employee who we represent specifically authorizes us to accept service on his or her behalf*—as we are now doing on behalf of Chief Fong. The individual officers in this case have not been served, and I

CITY AND COUNTY OF SAN FRANCISCO

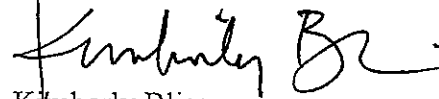
OFFICE OF THE CITY ATTORNEY

Letter to Gregory M. Haynes, Esq.  
2443 Fillmore, #194  
San Francisco, CA 94115  
Page 2  
June 11, 2008

am not authorized to accept service on their behalf. Accordingly, they need not join in the removal.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

A handwritten signature in black ink, appearing to read "Kimberly Bliss", written over the printed name.

Kimberly Bliss  
Deputy City Attorney

# **EXHIBIT C**

**DECLARATION OF KIMBERLY BLISS IN SUPPORT DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S REQUEST FOR PAYMENT OF COSTS AND  
ATTORNEY FEES RE MOTION TO REMAND**



DENNIS J. HERRERA  
City Attorney

KIMBERLY BLISS  
Deputy City Attorney

DIRECT DIAL: (415) 554-3861

E-MAIL: kimberly.bliss@sfgov.org

June 11, 2008

Gregory M. Haynes, Esq.  
2443 Fillmore, #194  
San Francisco, CA 94115

Re: *Ball et al. v. CCSF et al.*; U.S. Dist. Ct. Case No. C 08-02831 EMC

Dear Mr. Haynes:

I write to confirm our conversation of this morning.

I called you in response to a voicemail in which you asked me to file answers on behalf of all defendants in order to avoid a potential remand issue. I informed you that I do not yet represent the individual defendants, and accordingly do not have authority to accept service on their behalf or make an appearance on their behalf. The individual defendants are entitled to service in compliance with Fed. R. Civ. Pro. 4, and because they were not served before removal, there is no basis for a motion to remand.

Your voicemail also indicated your belief that Chief Fong must file a joinder in the Notice of Removal in her individual capacity. That is incorrect. Ms. Fong was not served with the complaint in her individual capacity until I was authorized to accept service on her behalf on June 11, 2008. Accordingly, she did not need to join in the notice of removal in her individual capacity, and does not need to now. Only defendants who have been *properly served* need to join or provide consent to removal. See, e.g., *Murphy Bros., Inc. v. Michette Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9<sup>th</sup> Cir. 1988); *Cachet Residential Builders, Inc. v. Gemini Ins. Co.*, 2007 WL 4357751 (D.Ariz. Dec. 11, 2007) ("in order for a defendant's consent to removal to be required, the defendant must have been properly served with process *prior to the filing* of the notice of removal") (emphasis added) (quotations and citations omitted).

Very truly yours,

DENNIS J. HERRERA  
City Attorney

A handwritten signature in black ink, appearing to read "Kimberly Bliss".

Kimberly Bliss  
Deputy City Attorney

# **EXHIBIT D**

**DECLARATION OF KIMBERLY BLISS IN SUPPORT DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S REQUEST FOR PAYMENT OF COSTS AND  
ATTORNEY FEES RE MOTION TO REMAND**

GREGORY M. HAYNES, Esq.  
2443 Fillmore, #194  
San Francisco, CA 94115  
(415) 546-0777

June 19, 2008

KIMBERLY A. BLISS  
1390 MARKET STREET  
SIXTH FLOOR  
SAN FRANCISCO, CA 94102  
OFFICE OF THE CITY ATTORNEY

RE: BALL V. CCSF

Dear Ms. Bliss,

I left a message on your phone message service advising you of the defective removal.

All of the defendants who have been served with the summons and complaint or otherwise have received the summons and complaint have not joined in the removal.

This includes both Heather Fong as well as the Earnest Ferrando. Mr. Ferrando was served personally on May 19, 2008 at 850 Bryant Street, San Francisco.

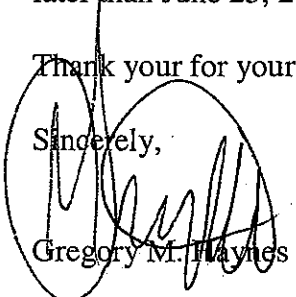
He had until May 18, 2008 to join the removal. He has not. Therefore, the removal is defective as all persons who where served (including Mr. Ferrando) or who have otherwise received the summons and complaint have not jointed the removal.

As I indicated to you on the phone message, if your office does not agree to remand by Monday, June 23, 2008, I will file a motion to remand, where the court may award costs and attorney fees for the procedurally defective remand.

Please let me know as soon as possible, whether your office will agreed to remand and no later than June 23, 2008 by 5:00p.m.

Thank your for your cooperation in this matter.

Sincerely,



Gregory M. Haynes

# **EXHIBIT E**

**DECLARATION OF KIMBERLY BLISS IN SUPPORT DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S REQUEST FOR PAYMENT OF COSTS AND  
ATTORNEY FEES RE MOTION TO REMAND**

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
JOANNE HOEPER, State Bar #114961  
Chief Trial Deputy  
KIMBERLY A. BLISS, State Bar #207857  
Deputy City Attorney  
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Facsimile: (415) 554-3837  
E-Mail: kimberly.bliss@sfgov.org

Attorneys for Defendants CITY AND COUNTY  
OF SAN FRANCISCO, HEATHER FONG AND  
ERNEST FERRANDO

GREGORY M. HAYNES, ESQ., State Bar #111574  
2443 Fillmore, #194  
San Francisco, CA 94115  
(415) 546-0777

Attorneys for Plaintiffs TELITHA BALL, DESSIA  
PATTERSON AND TELITHA PATTERSON

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TELITHA BALL, DESSIA  
PATTERSON, a minor, TELITHA  
PATTERSON, a minor, by and through  
their Guardian ad litem, TELITHA BALL,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, EARNEST FERRANDO,  
EDWARD YU, MICHAEL BROWNE,  
JAMERSON PON, JOHN  
GREENWOOD, DOUGLASS FARMER,  
WENDELL JONES, SEAN GRIFFIN,  
REESE BURROWS, MICHAEL  
NELSON, JOHN SYME, DAVID DO,  
KEVIN MURRAY, MATTHEW  
MASON, KEVIN CHIN, HEATHER  
FONG, and DOES 1 to 30,

Defendants.

CASE NO.: 08-2831 MHP

**STIPULATION AND [PROPOSED]  
ORDER FOR REMAND**

Trial Date: Not Set



RECITALS

1. On February 20, 2008, plaintiffs filed a complaint in the Superior Court in and for the City and County of San Francisco, Case No. 08-472360 (the "State Court Case"). No summons was issued and such complaint was not served on defendants.

2. On February 21, 2008, plaintiffs Telitha Ball, Dessia Patterson, a minor, and Telitha Patterson, a minor, by and through their guardian ad litem Telitha Ball, filed a First Amended Complaint against defendants City and County of San Francisco, Earnest Ferrando, Edward Yu, Michael Browne, Jamerson Pon, John Greenwood, Douglass Farmer, Wendell Jones, Sean Griffin, Reese Burrows, Michael Nelson, John Syme, David Do, Kevin Murray, Matthew Mason, Kevin Chin, Heather Fong and Does 1 to 30, in the State Court Case.

3. On June 6, 2008, Defendants City and County of San Francisco (the "City") and Heather Fong (in her individual capacity) removed this case to federal court pursuant to 28 U.S.C. §§ 1331 and 1441(a) & (b), on grounds that the First Amended Complaint stated *federal* claims pursuant to 28 U.S.C. §1983 (for violation of Plaintiffs' federal constitutional rights) and *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). At the time of removal, Defendants City and Fong believed they were the only defendants to have been served the Summons and First Amended Complaint.

4. Defendants have since learned that Defendant Ernest Ferrando was personally served the summons and complaint on May 19, 2008. Defendant Ferrando was accordingly required to file a consent to the removal pursuant to 28 U.S.C. §1446, but did not do so.

5. Accordingly, the parties agree that this action should be remanded to state court, and ask the Court to execute the following order remanding the matter to state court pursuant to 28 U.S.C. §1447.

**STIPULATION**

For the foregoing reasons, the parties, through their undersigned counsel, stipulate and agree to entry of an order remanding this matter to the Superior Court of the State of California for the County of San Francisco.

Dated: June 27, 2008

DENNIS J. HERRERA  
City Attorney  
JOANNE HOEPER  
Chief Trial Deputy  
KIMBERLY A. BLISS  
Deputy City Attorney

By: \_\_\_\_\_/s/  
KIMBERLY A. BLISS

Attorneys for Defendants CITY AND COUNTY OF  
SAN FRANCISCO, HEATHER FONG AND ERNEST  
FERRANDO

Dated: June 27, 2008

GREGORY M. HAYNES, ESQ.

By: \_\_\_\_\_/s/  
GREGORY M. HAYNES\*

Attorney for Plaintiffs TELITHA BALL, DESSIA  
PATTERSON AND TELITHA PATTERSON

\*The filer of this document attests that concurrence in  
the filing of this document has been obtained.

**ORDER**

GOOD CAUSE appearing therefore, it is HEREBY ORDERED pursuant to 28 U.S.C. §1447 that this action is remanded to the Superior Court of the State of California for the County of San Francisco.

IT IS SO ORDERED.


Dated:

\_\_\_\_\_  
THE HONORABLE MARILYN HALL PATEL  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT F**

**DECLARATION OF KIMBERLY BLISS IN SUPPORT DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S REQUEST FOR PAYMENT OF COSTS AND  
ATTORNEY FEES RE MOTION TO REMAND**

Kimberly Bliss/CTYATT  
07/01/2008 10:39 AM

To Kimberly Bliss/CTYATT@CTYATT  
cc Gregory Haynes <gregorymhaynes@yahoo.com>  
bcc  
Subject Re: Ball Stipulation 

Mr. Haynes,


I have not received a response to my email below or an indication of whether or not you want me to file the Stipulation requesting remand.

Please be aware that I will be out of the office July 3-6, 2008 without access to email. Accordingly, it would be helpful to hear from you before the end of business on Wednesday, July 2, 2008, so we can be sure to get the stipulation e-filed on or before July 7, 2008.

Yours,

Kimberly A. Bliss  
Deputy City Attorney  
Office of the City Attorney Dennis J. Herrera  
Tel.: 415.554.3861  
Fax: 415.554.3837  
Email: kimberly.bliss@sfgov.org  
Kimberly Bliss/CTYATT

Kimberly Bliss/CTYATT  
06/27/2008 01:19 PM

To Gregory Haynes <gregorymhaynes@yahoo.com>@SFGOV  
cc  
Subject Re: Ball Stipulation 

Mr. Haynes,

I write in response to your email below, which is virtually word for word the same email as the one I already received and responded to this morning. I will not address your requests to change the stipulation again. I have adequately addressed your "three points" in my response to you prior email.

I do write, however, to respond to your new assertion that I "have indicated that if federal court jurisdiction is accepted by plaintiff, then you will accept service on behalf of the other defendants." As I mentioned, the remaining individual defendants (excluding Lt. Ferrando, who filed an answer in federal court yesterday), have given me authority to accept service and make an appearance on their behalf only in the event Plaintiffs waive their right to seek a remand based on any procedural inadequacies in the removal process. I do not otherwise have authority to accept service on their behalf.

Yours,

Kimberly A. Bliss  
Deputy City Attorney  
Office of the City Attorney Dennis J. Herrera  
Tel.: 415.554.3861  
Fax: 415.554.3837

Email: kimberly.bliss@sfgov.org  
Gregory Haynes <gregorymhaynes@yahoo.com>



Gregory Haynes  
<gregorymhaynes@yahoo.com>

06/27/2008 01:07 PM

To: Kimberly Bliss <Kimberly.Bliss@sfgov.org>

cc

Subject: Re: Ball Stipulation

June 20, 2008

Dear Ms. Bliss,

I would like to address several points.

First, please indicate that you waive the failure to file motion for remand within 30 days.

Second, paragraphs 2 and 3 should be changed to note that 1) process was issued and defendants were served--the city and Fong 2) Fong removed, not in her personal capacity but only in her official capacity, and has never joined the petition for removal in her personal capacity.

And third, please indicate whether you believe it is proper to file a notice of removal for other defendants. I do not believe it is and do not want to have to incur costs all over again.

You have indicated that if federal court jurisdiction is accepted by plaintiffs, then you will accept service on behalf of the other defendants.

Sincerely,

Gregory M. Haynes

----- Original Message -----

From: Kimberly Bliss <Kimberly.Bliss@sfgov.org>

To: g.m.haynes@sbcglobal.net; gregorymhaynes@yahoo.com

Sent: Thursday, June 26, 2008 3:58:12 PM

Subject: Ball Stipulation

Counsel,

Please find attached a draft Stipulation and [Proposed] Order to Remand as we discussed on the phone.

As you requested, I have also left a hard copy of this draft stipulation at our reception desk, located at Fox Plaza, 1390 Market Street, **Seventh Floor**. It is in a manila envelope with your name clearly marked on it.

Please let me know as soon as possible if the draft stipulation meets with your approval. Once I have your consent to do so, we will have the stipulation and order e-filed with the Court.

As I told you on the phone yesterday, I do not have authority to accept service on behalf of the remaining officer defendants. You will have to serve them in accordance with the applicable rules of Civil Procedure after remand.

Yours,

Kimberly A. Bliss  
Deputy City Attorney  
Office of the City Attorney Dennis J. Herrera  
Tel.: 415.554.3861  
Fax: 415.554.3837  
Email: kimberly.bliss@sfgov.org

Kimberly Bliss/CTYATT  
06/27/2008 11:59 AM

To Gregory Haynes <gregorymhaynes@yahoo.com>@SFGOV  
cc  
bcc  
Subject Re: Ball Stipulation

Mr. Haynes,

I write in response to your email below, dated June 20, 2007, but sent to me on June 27, 2008.

I do not understand the need for any of your requested changes.

First, there is no need to "waive" the 30-day deadline for a motion to remand, since no motion will be necessary. We are stipulating to remand and the stipulation will be filed before the end of the 30-day period (which expires on July 7, 2008).

Second, you are wrong. As I have told you before, Chief Fong was not served in her individual capacity prior to the removal, and accordingly did not need to file a joinder. You have provided me with absolutely no information (much less a proof of service) to indicate otherwise. Also, paragraph 3 already indicates that the City and Chief Fong (in her official capacity) were served with the summons and the FAC, so I do not understand your request to add additional language on this issue.

Third, this stipulation is not the proper place to indicate whether or not a future removal would be proper.

The defendants remain willing to stipulate to a remand, but cannot include language that misrepresents the facts or is not necessary to the stipulation. Please let me know at your earliest convenience if you agree to the e-filing of the stipulation as it stands, so we can be sure to have it e-filed on or before July 7, 2008.

Yours,

Kimberly A. Bliss  
Deputy City Attorney  
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Gregory Haynes <gregorymhaynes@yahoo.com>



Gregory Haynes  
<gregorymhaynes@yahoo.co  
m>  
06/27/2008 11:33 AM

To Kimberly Bliss <Kimberly.Bliss@sfgov.org>  
cc  
Subject Re: Ball Stipulation

June 20, 2008

Dear Ms. Bliss,

I would like to address several points.

First, please indicate that you waive the failure to file motion for remand



within 30 days.

Second, paragraphs 2 and 3 should be changed to note that 1) process was issued and defendants were served--the city and fond 2) Fong removed, not in her personal capacity but only in her official capacity, has never joined the petition for removal in her personal capacity.

And third, please indicate whether you believe it is proper file a notice of removal for other defendants. I do not believe it is and do not want to have to incur costs all over again.

Sincerely,

Gregory M. Haynes

----- Original Message -----

From: Kimberly Bliss <Kimberly.Bliss@sfgov.org>

To: g.m.haynes@sbcglobal.net; gregorymhaynes@yahoo.com

Sent: Thursday, June 26, 2008 2:58:12 PM

Subject: Ball Stipulation

Counsel,

Please find attached a draft Stipulation and [Proposed] Order to Remand as we discussed on the phone. As you requested, I have also left a hard copy of this draft stipulation at our reception desk, located at Fox Plaza, 1390 Market Street, **Seventh Floor**. It is in a manila envelope with your name clearly marked on it.

Please let me know as soon as possible if the draft stipulation meets with your approval. Once I have your consent to do so, we will have the stipulation and order e-filed with the Court.

As I told you on the phone yesterday, I do not have authority to accept service on behalf of the remaining officer defendants. You will have to serve them in accordance with the applicable rules of Civil Procedure after remand.

Yours,

Kimberly A. Bliss  
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